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September 23, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222, SC-1170
Washington, DC 20554

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OFFICE OF THE SECRETARY

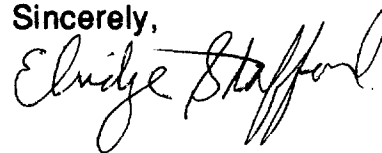
RE: Telephone Number Portability, CC Docket No. 95-116

Dear Mr. Caton:

Today, Bill Johnston, Bob McKenna, Merlin Jenson and the undersigned, representing U S WEST, met with Kathleen Franco from the Office of Commissioner Chong in conjunction with the Commission's Further Notice of Proposed Rulemaking in the above-referenced docket. We discussed U S WEST's position on cost recovery for number portability. The attached documents were used in the discussion. Please include a copy of this letter and the attachments in the record in this proceeding.

In accordance with 47 C.F.R. § 1.1206(a)(1) of the Commission's rules, the original and one copy of this letter and the attachments are being filed with your office. Acknowledgment and date of receipt are requested. A duplicate of this letter is attached for this purpose.

Sincerely,



Attachments

cc: Ms. Kathleen Franco

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***Competitively Neutral Number Portability Cost Recovery Is
Necessary for Fair and Vigorous Competition in All Markets***

***U S WEST
September 23, 1997***

Overview of Number Portability Cost Recovery Issues

- **U S WEST Communications is Incurring Number Portability Costs in 1997**
- **U S WEST is Entitled to Cost Recovery Which Should Begin Immediately**
- **End User Surcharges Are The Best Recovery Plan**
- **All Costs Incurred Relate to Number Portability**
- **Cost Recovery Rules Must Recognize Difference in Markets**

U S WEST Communications is Incurring Number Portability Costs in 1997

- ILECs need number portability cost recovery now.
 - Number portability is a major cost to ILECs.
 - USWC's estimated cost of providing portability in ten MSAs is \$361 million.
 - USWC's estimated cost of providing portability in all likely locations is \$517 million.
 - USWC has already spent \$71 million and will spend an additional \$107 million in 1997.
 - Lack of cost recovery impairs USWC's ability to fund other needed projects.
 - Failure to give ILECs immediate and full cost recovery is not competitively neutral.
 - ILECs must deploy the technology in many switches. USWC must equip 50 switches in the Minneapolis MSA.
 - Most CLECs need only a single switch to cover a large market.
 - Number Portability is being deployed solely for new entrants.
 - Recovery of costs over a short period is essential for competitive neutrality.

U S WEST is Entitled to Cost Recovery Which Should Begin Immediately

- Number Portability is being placed to benefit customers and competitors.
- Cost is being incurred for the benefit of competitors.
- Unless recovery is allowed over a short period, USWC will be placed at a competitive disadvantage.
- Recovery from end users over 3 years is competitively neutral.
 - RBOC's are being asked to foot the bill for costs which primarily benefit competitors.
 - Puts all competitors on equal cost basis.
 - Allows recovery over the transition period to full competition.
- Burden relates to upfront build not ongoing costs once the basic infrastructure has been placed.

End User Surcharges Are the Best Recovery Plan

- The '96 Act & FCC have determined that deployment of Number Portability is an important first step in developing local competition in telecommunications.
 - "To the extent that customers are reluctant to change service providers due to absence of Number Portability, demand for services by new service providers will be depressed.... and thereby frustrate the competitive goals of the 1996 Act." (First R&O @ para 31)
 - Deployment primarily benefits new entrants, not incumbents.
 - Recovery of costs over a short period is essential for competitive neutrality.
- All current customers benefit from Number Portability and should pay the cost.
 - Virtually all calls (intrastate and interstate) within or to Number Portability areas will require use of Number Portability investments.
 - They can change service providers in the future without changing their telephone number.
 - They can call others who have changed service providers without learning new telephone numbers.

End User Surcharges Are the Best Recovery Plan (Cont'd.)

- Surcharge should be applied to all end users bills.
- An end user surcharge plan over a short transition plan is the best recovery plan and is competitively neutral.
 - Any surcharge over a three-to-five year period will be small. Most likely substantially less than customers pay in telephone taxes.
 - Simplest and least costly alternative.

All Costs Incurred Relate to Number Portability

- FCC's 3 tier approach to cost does not reflect market realities.
- All costs being incurred are being deployed solely for the benefit of Number Portability.

Cost Recovery Rules Must Recognize Difference in Markets

- Revenues from the incremental deployment of Number Portability related software are speculative at best in many markets.
- USWC deploys software for enhanced services only where a market need has been identified.
 - Areas where Number Portability causes new software to be deployed have not been identified as potential markets.
 - Small population & lack of business customers desiring AIN services.
 - Cost of incremental investments is too high to justify offering service.
 - USWC has deployed CLASS features in all switches.
- The great majority of services enabled by new generics and software merely provide monitoring capabilities.
 - SS7 SSP capability has virtually no potential for new revenues.
 - All new AIN capability is for Number Portability only.
 - All vendors have licensed AIN capability for providing Number Portability only.
 - Any additional uses require a separate license agreement & payment.

Cost Recovery Rules Must Recognize Difference in Markets (Cont'd.)

- Buckley, WA (Seattle MSA) -- Selected for Number Portability
 - DMS 10 switch
 - Switch serves approximately 2900 access lines.

- Aberdeen, SD -- Expected future deployment
 - 1990 population -- 24,927 -- small by national standards, but Aberdeen is the third largest city in South Dakota -- big by South Dakota standards.
 - When competition comes to South Dakota, it will come to Aberdeen. For example, the access service consortium of South Dakota independent telephone companies.
 - Aberdeen switch serves approximately 19,000 access lines.

U S WEST Communications

Expected 1A ESS Replacements - LNP

[illegible]

NUMBER PORTABILITY—COST RECOVERY

The Act requires LECs “to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission. The Act further states that “[t]he cost of establishing. . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.” Number portability is a federal mandate, and the FCC, in prescribing number portability rules, has the responsibility for ensuring that all number portability costs are recovered on a federal basis in a manner which is competitively neutral.

I. The FCC cannot relegate number portability cost recovery responsibility to the states.

- Number portability is a federal mandate—the FCC cannot foist the responsibility for financing federal mandates onto state governments.
- Illinois Bell makes it very clear that, when costs are legitimately incurred in one jurisdiction (in this case the federal jurisdiction pursuant to FCC mandate), the regulator may not lawfully ignore those costs in the hope, or even anticipation, that the regulator in the other jurisdiction may step up and permit cost recovery.
- There is no guaranty that state regulators will take action which permits full number portability cost recovery in a manner which is competitively neutral. If the FCC decided to relegate to states some portion of the responsibility for number portability cost recovery, it would need to dictate specific rules to the states to ensure compliance with the federal mandate imposed by the Act and

the FCC. Given the FCC's express authority over number portability, including number portability cost recovery, the FCC very likely possesses this vast preemption authority in this one instance.

- Of course, if the FCC were to choose to relegate some number portability cost recovery to the states, and should states not enable U S WEST to recover its full cost of implementing number portability, a constitutional taking would occur which would be the responsibility of the federal government. The FCC's authority to expose the federal treasury by delegating federal cost recovery to state regulators is highly questionable.

II. U S WEST is entitled to recover all of its number portability costs.

- As implementation of number portability is a federal mandate, U S WEST is entitled to direct recovery of all number portability costs.
- The FCC has required implementation of LRN technology, a far more expensive technology than one favored by many LECs, thus assuming even more responsibility for recovery of number portability costs.
- Federally mandated implementation of number portability without enabling complete cost recovery would constitute a taking of U S WEST's property by the FCC.
- Simply permitting number portability costs to show up in other rates not related to number portability (e.g., an exogenous price cap adjustment) would not be sufficient.

- Would not be competitively neutral because such action would result in costs caused by regulatory action directing number portability implementation being disproportionately borne by incumbent LECs.
- May not be recovered. For example, under the current rules, an exogenous price cap adjustment would show up in the U S WEST transport interconnection charge. The Commission has made this charge extremely susceptible to avoidance.
- The normal principle that a rate order is constitutionally valid only if the regulated utility is made whole in the order itself is directly applicable to number portability cost recovery. The number portability cost recovery order must be complete, constitutionally adequate, and competitively neutral on its face. The number portability cost recovery mechanism may not rely on other jurisdictions, or other potential FCC proceedings, as a vehicle for potential cost recovery.

III. U S WEST is entitled to recover, as part of number portability implementation costs, the costs incurred in retiring switches and other equipment before they had been fully depreciated, and before U S WEST would have retired them in the normal course of business.

- These costs, which would not have been incurred except for number portability implementation, are directly related to number portability.

- The costs are identifiable, and do not include any network upgrades which would have been undertaken in the absence of number portability.
- Failure to permit recovery of these costs as part of number portability costs would violate the principle of competitive neutrality.
- U S WEST will submit, in support of its number portability costs in the appropriate recovery proceeding established by the Commission, detailed support of the premise that switch replacement costs which are part of number portability costs are directly caused by number portability implementation.

IV. A decision is necessary.

- Given ambiguity on jurisdictional decision, U S WEST cannot know with confidence in which jurisdiction number portability cost recovery should be sought.
 - States point to federal mandate.
 - Federal cost recovery mechanism still not established.
- It is fundamentally unlawful to require U S WEST to spend these vast amounts implementing number portability when there remains no guaranty that these costs will ever be recovered pursuant to a lawful cost recovery structure.
- If cost recovery structure which is complete and lawful cannot be implemented immediately, FCC should terminate implementation schedule until after such a structure can be implemented.

V. Competitive neutrality requires that number portability costs be recovered from those benefited by number portability implementation.

- Interim number portability costs not recovered on a competitively neutral basis.
- Commission must not confuse competitive neutrality with a policy favoring specific competitors. Competitive neutrality protects incumbents as much as it does new entrants.
- U S WEST plan is competitively neutral.
 - An end user surcharge to any customer connected to a U S WEST loop—whether that loop is part of a U S WEST service or an unbundled network element.
 - Charge exists only when U S WEST facilities are utilized.
 - Does not charge facilities-based competitors.
 - Charge is a predictable and reasonable transition to competition.